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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/706,947

11/14/2003

Thomas J. Nelson

WIL-41127-70

7422

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04/27/2009

WILSONART INTERNATIONAL, INC.

C/O WELSH & FLAXMAN, LLC

2000 DUKE STREET, SUITE 100

ALEXANDRIA, VA 22314

EXAMINER

GILBERT, WILLIAM V

ART UNIT

PAPER NUMBER

3635

MAIL DATE

DELIVERY MODE

04/27/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/706,947

**Applicant(s)**

NELSON, THOMAS J.

**Examiner**

William V. Gilbert

**Art Unit**

3635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09 February 2009.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1, 2, 4, 5, 7, 16-18, 20 and 27 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☒ Claim(s) 27 is/are allowed.  
6) ☒ Claim(s) 1, 2, 4, 5, 7, 16-18, 20 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO/SF/08)  
Paper No(s)/Mail Date \_\_\_\_\_  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

This is a first action following a Request for Continued Examination. Claims 3, 6, 8-15, 19 and 21-26 are cancelled. Claim 7 is pending but withdrawn from consideration as being dependent from a cancelled claim. Claims 1, 2, 4, 5, 16-18, 20 and new claim 27 are pending and examined below.

***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 09 February 2009 has been entered.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at

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the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

**Claims 4 and 5** are rejected under 35 U.S.C. 103(a) as being unpatentable over Wright (U.S. Patent No. 6,588,165) in view of Nelson (U.S. Patent No. 6,230,385).

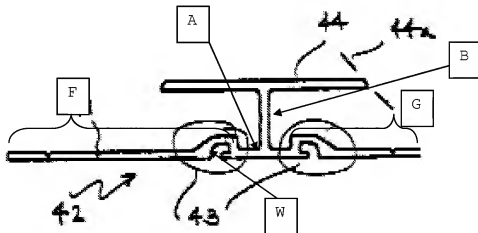


Figure 4B from Wright

Claim 4: Wright discloses a disengageable connector comprising a longitudinally extending connector body having a similar profile along its entire length, the connector has a base ("A" from attached Fig. 4B from Wright) and a projection ("B") extending from the base, the base has top and bottom surfaces (proximate "A" is the top surface and proximate "W" is the bottom surface), first and second protrusions ("F" and "G") extending vertically from the base, the protrusions are spaced apart from the projection and are located on either side of the projection. The limitation "shaped and dimensioned...foam pad" is a statement of intended use of the claimed invention and must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. Wright does not disclose the footing members extending from the bottom surface as claimed, but Nelson discloses a connecting device (Fig. 2) with protrusions (2) extending downwardly from the base. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to have the feet extending from the bottom as claimed in order to aid in gripping an understructure. In addition, the combination of the prior art does not disclose the actual depth of the footing

members as approximately 0.036 inches in depth. It would have been obvious at the time the invention was made to a person having ordinary skill in the art as a matter of design choice to have the dimensions footing members as claimed because applicant failed to state a criticality for the necessity of the limitation and the prior art of record is capable of being designed to meet the limitation as claimed and maintain within the scope of the invention. See MPEP 2144.04(IV) (A) citing *Gardner v. TEC Systems, Inc.*, 725 F.2d 1338 (Fed. Cir. 1984), the Federal Circuit held that, where the only difference between the prior art and the claims was a recitation of relative dimensions of the claimed device and a device having the claimed relative dimensions would not perform differently than the prior art device, the claimed device was not patentably distinct from the prior art device. To change the dimension of the feet would result in a product that would operate properly. In addition, the resulting combination results in feet that would be beneath the projection and protrusion.

Claim 5: the protrusions extend substantially the entire length of the connector (as shown).

**Claims 16, 17 and 20** are rejected under 35 U.S.C. 103(a) as being unpatentable over Wright in view of Rockar (U.S. Patent No. 4,683,693).

Claim 16: Wright discloses a connector for interconnecting panels comprising a body with a base ("A") having a longitudinal extent with a first and second end, the connector further includes a projection ("B") extending from a top surface of the base and having a central stem ("shown by arrow "B") with first and second outwardly extending members (44) extending from the stem, first and second protrusions ("F" and "G", the protrusions extend vertically from portion indicated as "A") extending from the base adjacent a first edge, and the protrusions decrease in height (see portions indicated by proximate 43) as it extends from the center of the base towards the edge of the base. Wright does not disclose the projection extending beyond the longitudinal extent of the base. Rockar discloses a framing system for panels (Figs. 5 and 6) that has a portion (proximate 142) that extends beyond the longitudinal extent of the base along at least one end of the base (114) to form an outwardly extending ear. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to have this structural limitation in order to provide the

ability to join panels without disruption at points intersecting each other.

Claim 17: the projection includes a top and bottom portions and right and left halves. The language "for insertion into edges...connected" is a statement of intended use of the claimed invention and must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Claim 20: the combination of Wright in view of Rockar would result in the protrusions extending beyond the longitudinal extent of the base and forming a locking tab.

**Claim 18** is rejected under 35 U.S.C. 103(a) as being unpatentable over Wright in view of Rockar as applied to claim 16 above, and further in view of Nelson.

Claim 18: Wright does not disclose the footing members extending from the bottom surface as claimed, but Nelson discloses a connecting device (Fig. 2) with protrusions (2) extending downwardly from the base. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to have the feet extending from the bottom as



claimed in order to aid in gripping an understructure. The language "shaped and dimensioned...second protrusion" is a statement of intended use of the claimed invention and must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

***Allowable Subject Matter***

3. **Claims 1, 2, and 27** are allowed.

***Response to Arguments***

4. Applicant's arguments, see response, filed 09 February 2009, with respect to the rejection(s) of the claim 1 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of the prior art cited above.

Per applicant's argument regarding the incorporation of the Rockar reference (cited above), the examiner maintains that the rejection was proper. Applicant stated that the examiner labeled portion 142 of Rockar (see Fig. 5) as the portion that extends. The examiner respectfully notes that, as stated in the

prior Office action, the portion is "proximate 142" (see page 7 of the action dated 07 October 2008), as shown in Fig. 5, the portion proximate 142 does extend beyond 114. This is required for the connection of the members as shown in Fig. 6. The obviousness of the combination of the prior art would result in the prior art meeting the limitations as claimed.

### ***Conclusion***

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to William V. Gilbert whose telephone number is 571.272.9055. The examiner can normally be reached on Monday - Friday, 08:00 to 17:00 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on 571.272.6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Richard E. Chilcot, Jr./  
Supervisory Patent Examiner, Art Unit  
3635

/W. V. G./  
Examiner, Art Unit 3635